UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MISSOURI SOUTHEASTERN DIVISION

MELVIN CHAILLAND,)	
Plaintiff,)	
VS.)	Case No. 1:05CV147 HEA
HARTFORD LIFE INSURANCE COMPANY,)))	
Defendant.)	

OPINION, MEMORANDUM AND ORDER

This matter is before the Court on defendant's Motion to Dismiss Pursuant to Fed.R.Civ.P. 41(b), [Doc. # 11]. Plaintiff has not responded to the motion within the prescribed time period.¹ For the reasons set forth below, the Motion is granted.

On November 14, 2005, this Court entered its Order that plaintiff's state law claims were preempted under the provisions of ERISA. The Court granted plaintiff 14 days within which to file an amended complaint to include allegations of exhaustion of remedies, if any. Plaintiff has until November 28, 2005 in which to file an amended complaint. To date, plaintiff has failed to do so. Plaintiff has not sought leave of court to seek additional time within which to file an amended

¹ Pursuant to the Court's Local Rules, failure to respond to a motion may be construed as a concession of the merits of the motion.

complaint.

Rule 41(b) of the Federal Rules of Civil Procedure provides that a defendat

may move for a dismissal of an action, inter alia, for failure of a plaintiff to comply

with a court order. This rule further provides that the requested dismissal operates

as an adjudication on the merits. Defendant has so moved, and plaintiff has failed to

respond in any way to the Court's Order and to defendant's Motion. The motion is

well taken.

Accordingly,

IT IS HEREBY ORDERED that defendant's Motion to Dismiss Pursuant

to Fed.R.Civ.P. 41(b), [Doc. # 11] is granted.

IT IS FURTHER ORDERED that this matter is dismissed with prejudice.

Dated this 17th day of January, 2006.

HENRY EDWARD AUTREY

UNITED STATES DISTRICT JUDGE

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- 2 -